DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS: 01-0188SLOF and 01-0190SLOF
Indiana Corporate Income Tax
For the Tax Year 1996

NOTICE: Under 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Denial of Claim for Refund** – Gross Income Tax.

Authority: IC 6-2.1-2-5(9); IC 6-2.1-8-5(a); IC 6-8.1-9-1; IC 6-8.1-9-2; IC 6-8.1-9-2(a).

Taxpayer challenges the Department of Revenue's decision denying taxpayer a refund or a credit for an amount of taxes paid during 1996. Taxpayer maintains that the request for refund was timely filed and that the Department erred in denying either the credit or a refund.

STATEMENT OF FACTS

Two closely related, out-of-state business entities, submitted a joint protest to the Department of Revenue (Department). As in the original Letter of Findings (LOF), the companies are designated as "taxpayer holding company" and "taxpayer operating company."

Taxpayer operating company was in the business of running three restaurants in Indiana. Taxpayer operating company had no other Indiana business activities.

Taxpayer holding company held real estate and personal property used by taxpayer operating company. This real estate and personal property was used in the day-to-day operation of the three Indiana restaurants. Taxpayer holding company was incorporated in 1969 for the specific purpose of holding the various Indiana restaurant properties.

The officers and directors of the two companies are identical. As stated by taxpayer's representative during the original hearing, taxpayer holding company was merely a "shell corporation" created entirely for the purpose of allowing taxpayer holding company to obtain advantageous "single asset" financing.

In the original audit, it was determined that taxpayer holding company was a "non-filer" receiving Indiana source income; the original audit determined that taxpayer holding company was subject to the state's corporate income tax scheme, and the audit assessed taxes accordingly.

The original LOF disagreed with taxpayers' contentions that taxpayer holding company – by virtue of a purported agency relationship – did not receive Indiana gross income separately

identifiable from the income of taxpayer operating company. Taxpayer holding company was reimbursed for depreciation expenses it incurred on personal property held in Indiana; taxpayer holding company received rental income attributable to real property owned within the state; in addition – and at the heart of the issue raised by taxpayer during the rehearing – taxpayer holding company sold some of its Indiana real property in 1996, received the money from that sale, and paid gross income taxes on the proceeds. In effect, the LOF determined that taxpayer holding company received gross income and was subject to this state's gross income tax scheme.

However, the LOF also found that taxpayer holding company – in calculating its gross income tax liability – was entitled to deduct from its gross income an amount of money it received from the sale of certain Indiana real estate and then used to pay any outstanding debt on that previously encumbered property.

After the LOF was issued, a supplemental audit report was conducted to determine taxpayer holding company's unpaid state income tax. In doing so, the supplemental report reflected the determination that taxpayer holding company was entitled to a reduction in calculating the gross income subject to tax on the verifiable portion of the proceeds from the 1996 sale of the Indiana real estate used to repay the principal on the outstanding debt on that Indiana real property.

In calculating taxpayer holding company's 1996 tax liability, taxpayer holding company was credited for the amount of tax it paid at the time of the property sale. That credit reduced taxpayer holding company's 1996 tax liability to zero. However, the audit determined that taxpayer holding company was not entitled to a refund of the tax in excess of the amount used to offset the 1996 liability.

Taxpayer challenged the decision not to refund the amount of excess 1996 taxes and submitted a letter to that effect. This Supplemental Letter of Findings follows.

DISCUSSION

I. **Denial of Claim for Refund** – Gross Income Tax.

At the time taxpayer holding company sold the Indiana real property in 1996, taxpayer holding company paid gross income tax to the treasurer of an Indiana county – the situs of that real property. Indiana imposes a gross income tax of 1.2 percent on the proceeds receives from "sales of real estate . . . ." IC 6-2.1-2-5(9). IC 6-2.1-8-5(a) states that, "A taxpayer shall pay the gross income taxes imposed on the sale or transfer of an interest in real estate by paying the tax to the treasurer of the county in which the real estate is located."

Using specific dollar amounts for illustrative purposes, taxpayer holding company paid $10,000 in gross income tax in 1996. In August of 2002, the Department issued the original LOF which concluded that taxpayer holding company should have been paying Indiana corporate income tax during 1991 through 1998. Accordingly, the supplemental audit determined that – again for purposes of illustration – taxpayer holding company owed $4,000 for 1996 Indiana income tax. Taxpayer holding company was given credit for the $10,000; taxpayer holding company's $4,000 1996 liability was reduced to zero.

Taxpayer holding company maintains that it is entitled to a refund of the remaining $6,000. Alternatively, taxpayer holding company argues that that $6,000 should be used to offset the remaining 1991 to 1995 and 1997 to 1998 liability.

IC 6-8.1-9-1 states that, "If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for refund with the department . . . in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following (1) The due date of the return: (2) The date of payment."

There is no dispute that taxpayer holding company paid gross income tax on the proceeds received from the 1996 sale of real property located within the state. There is no dispute that the supplemental audit review credited that payment against taxpayer holding company's 1996 corporate income tax liability reducing taxpayer holding company's 1996 liability to zero. There is no dispute that – after offsetting the 1996 liability – a portion of the 1996 gross income tax payment remained "orphaned." The supplemental audit review declined to credit the "orphaned" amount in order to offset taxpayer holding company's outstanding liability for the remaining years at issue.

Taxpayer holding company first argues that it is entitled to a cash-in-hand refund of the orphaned amount. Taxpayer bases its argument on the ground that, pursuant to IC 6-8.1-9-1, taxpayer holding company submitted a timely claim for refund within the three-year limitations period. Taxpayer's claim is wholly meritless. Taxpayer holding company maintains that it is entitled to a cash-in-hand refund by virtue of the fact that taxpayer operating company submitted Indiana returns in which it – taxpayer operating company – claimed credit for the 1996 gross income tax payment. The refund statute does not permit such a strained interpretation. "If *a person* has paid more tax than *the person* determines is legally due for a particular taxable period, *the person* may file a claim for refund with the department . . . ." IC 6-8.1-9-1 (*Emphasis added*). "[I]n order to obtain the refund, *the person* must file the claim with the department within three (3) years . . . ." Id. Taxpayer holding company and taxpayer operating company made a decision to incorporate as separate business entities. Presumably, the two entities chose to do so based on the organizational, financial, and tax benefits attendant upon such an arrangement. Having made that decision, both entities must also live with the limitations pursuant to parties' dual existence. Under IC 6-8.1-9-1, taxpayer holding company was entitled to submit a claim for refund of taxes it paid in 1996. Taxpayer holding company failed to do so. There is no merit to taxpayer holding company's implication that it is entitled to the refund by virtue of tax returns submitted by an entirely distinct entity.

Nonetheless, taxpayer holding company sets out a separate argument; it argues that – having been denied the cash-in-hand refund – under IC 6-8.1-9-2, the Department is obligated to apply the orphaned 1996 gross income tax payment against taxpayer holding company's 1991 to 1995 and 1997 to 1998 outstanding tax liabilities.

IC 6-8.1-9-2(a) reads in relevant part as follows:

> If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against the amount of that same

> tax that is assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due.

Taxpayer maintains that pursuant to the cited language, that the Department is obligated to apply the "excess" 1996 gross income tax payment to its remaining tax liabilities. However, taxpayer's claim is necessarily predicated on the statutory language which states that, "If the department finds that a person has paid more tax . . . ." Id. Taxpayer's argument necessarily proceeds from the assumption that the Department "found" taxpayer paid excess gross income taxes during 1996. There is no indication in either the original audit report or the supplemental review that the Department "found" any such thing. Essentially, the Department determined that once taxpayer paid the assessment, it would be entitled to a refund of the full amount that would be allowed per the statute of limitations. The supplemental audit simply took an administrative shortcut obviating the need for the taxpayer to pay the assessment and file a refund claim.

IC 6-8.1-9-1 places the burden for requesting a refund of taxes squarely on the taxpayer. "If a person has paid more tax than the person determines is legally due for a particular taxable period, *the person may file a claim for a refund with the department.*" IC 6-8.1-9-1(a). (*Emphasis added*). Hand-in-hand with the taxpayer's obligation to submit a refund claim, is the obligation to submit within the limited time provided. "[I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following (1) The due date of the return. (2) The date of payment." Id.

Taxpayer seeks to avoid the three-year limitation imposed under IC 6-8.1-9-1(a) by piggy-backing on the decision to allow a credit for the amount of gross income tax paid at the time of the 1996 real estate sale. However, as noted above, the Department has made no "finding" which would necessitate granting a credit against taxpayer's holding company's remaining tax liabilities. It was taxpayer holding company's obligation to pay Indiana corporate income taxes; it was taxpayer holding company's obligation to submit a claim for a refund; it was taxpayer holding company's obligation to submit that claim with the three-year limitations period.

FINDING

Taxpayer's protest is respectfully denied.

DK/JM/MR – 031408